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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23 .11.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.20 of 1996

1. Chairman
   Tamil Nadu Electricity Board
   Madras – 2.

2. Superintending Engineer
   Tamil Nadu Electricity Board,
   Thiruvannamalai T.S. District. .... Appellants

Vs.

1. Mrs. Lalitha

2. Minor Manikandan

3. Minor Lakshmi ..... Respondents

(Minors represented by guardian
and mother, the first respondent herein)

Appeal filed against the Judgment and Decree, dated 29.07.1994 made in O.S.No.81 of 1992 on the file of the Sub Court, Arni.

For Appellants : Mr.N.Muthuswami for TNEB

For Respondent : Mr.R.Vijayakumar for

M/s. T.R.Rajaraman

J U D G M E N T

This appeal has been preferred against the Judgment and Decree, dated 29.07.1994 made in O.S.No.81 of 1992 on the file of the Subordinate Court, Arni.

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2. The respondents / defendants are the Legal Representatives of one V.Shanmugam, who died on 27.09.1989 at about 10 a.m, while he set his feet on a severed live electric wire that had fallen on the ground in an agricultural field, belonging to one Munuswamy Naidu in S.U.Vanam, Arni Taluk and died of electrocution instantaneously. After the death of Shanmugam, it was reported to the police, FIR was registered and postmortem was also conducted. The Tahsildar, Arni issued Death Certificate, Ex.A.2 and also Legal Heirship Certificate, Ex.A.3. It is not in dispute that the first respondent is the wife and the respondents 2 and 3 are the minor children and as such they are the Legal Heirs of the deceased.

3. Before the trial court, on the side of the respondents, the first respondent was examined as P.W.1, apart from another witness, P.W.2 and Exs.A1 to A29 were also marked. On the side of the appellants / defendants, D.W.1 was examined and no document was marked on the side of the appellant herein. Considering the oral and documentary evidence, the trial court has held that the claims of the respondents / plaintiffs have been proved and accordingly decreed the suit and directed the appellants to pay a sum of Rs.90,000/- as compensation to the respondents herein. Aggrieved by which, this appeal has been preferred by the appellants / defendants.

4. According to P.W.1, the deceased Shanmugam was the bread winner of his family and he was earning an average of Rs.50/- per day as an agricultural coolie and also by milk vending business. According to her, she had sent a written representation to the Tahsildar, the original of Ex.A.5, the postal acknowledgment has been marked as Ex.A.6 and also a representation to the District Collector, the copy of same has been marked as Ex.A.7.

5. She has further stated that she had received Ex.A.8, reply from the Office of the Superintending Engineer, TNEB, Thiruvannamalai Division and under Ex.A.9, required particulars were also furnished by the respondents. Subsequently, it was informed that the appellants would pay only Rs.10,000/- as compensation under Ex.A.19. After receiving the aforesaid amount, she wrote another letter to the appellants office, seeking adequate compensation, but the request was not complied with, hence, she filed the suit, seeking compensation of Rs.90,000/- from the appellants.

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6. The points for consideration arose in this appeal are as follows :

1) Whether V.Shanmugam, husband of the first respondent and father of the respondents 2 and 3 died due to the negligence of the appellants ?

2) Whether the compensation awarded by the trial court for the death of the said Shanmugam is exorbitant ?

7. Mr.N.Muthuswami, learned counsel appearing for the appellants contended that the electrocution and the death of the husband of the first respondent was not occurred due to the negligence on the part of the appellants herein. According to him, as there was heavy rain and wind, the overhead electric live wires were severed and hanging, but the same was not due to the negligence of Tamil Nadu Electricity Board and as such the appellants are not liable to pay any compensation to the respondents.

8. In the written statement, the appellants herein have admitted that there was a heavy rain and wind, which started in mid night on 26.09.1989 and continued till the next day morning. As there was sudden rain and speedy wind, without any prior symptom, the department could not take steps to switch off the current. The appellants further stated in the written statement that the service connection in S.C.No.33 was not under use and the concerned consumer had not intimated to disconnect the electric line, otherwise, the appellants could have taken immediate steps to disconnect the line and restore its original position.

9. Per contra, Mr.R.Vijayakumar, learned counsel appearing for the respondents would contend that as per Rule 91 of the Indian Electricity Rules, 1956, it is a mandatory duty on the part of the Electricity Board to adopt safety measures in order to prevent unexpected electrocution on account of sever in live wire, due to storm or speedy wind.

10. Rule 91 of Indian Electricity Rules, 1956 reads as follows :

> " 91. Safety and protective devices : - (1) Every overhead line, (not being suspended from a dead bearer wire and not being covered with insulating material and not being a trolley-wire) erected over any part of street or other public place or in any factory or mine or on any consumer's premises shall be protected with a device approved by the

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Inspector for rendering the line electrically harmless in case it breaks.

(2) An Inspector may by notice in writing require the owner of any such overhead line wherever it may be erected to protect it in the manner specified in sub-rule (1).

(3) The owner of every high and extra-high voltage overhead line shall make adequate arrangements to the satisfaction of the Inspector to prevent unauthorised persons from ascending any of the support of such overhead lines which can be easily climbed upon without the help of a ladder or special appliances. Rails, reinforced cement concrete poles and pre-stressed cement concrete poles without steps, tubular poles, wooden supports without steps, I sections and channels shall be deemed as supports which cannot be easily climbed upon for the purpose of this rule."

11. In the decision, Nirmala vs. T.N.Electricity Board, reported in AIR 1984 MADRAS 201, this Court has held as follows :

" 7. Overhead electric wires carrying heavy load of electric energy are highly dangerous and if any human being or animal comes into contact with the same, the consequences are fatal. Hence, great care and caution are expected of the Electricity Board in laying, installing and maintaining overhead wires and generally these wires do not snap and fall down. If therefore, such a thing happens, a prima facie inference can be drawn that there has been carelessness or negligence on the part of the Electricity Board in transmitting electric energy or in maintaining the transmission lines. "

12. As per Rule 91 of Indian Electricity Rules, 1956, every overhead electric line, which is not covered with insulating material, but erected over any part of a street or other public place or any factory or mine or any consumer's premises shall be protected with a device approved by the Inspector for rendering the live electrical line harmless in case, it breaks. If proper precaution under this rule is taken, the line in case breaks would become dead and harmless. The fact is that the overhead electric line, after having snapped and fallen down, if continued to be a live wire and would be harmful and also endanger the life of human beings as well as animals and therefore, proper measures could have been taken by the official of the Electricity Board.

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13. As contended by the learned counsel appearing for the respondents, the principle of 'res ipsa loquitur' is applicable for the facts and circumstances of this case, in order to prove the negligence and also the non-compliance of Rule 91 of Indian Electricity Rules, 1956. It is not in dispute that on 27.09.1989 at about 10 a.m, the husband of the first respondent, while setting his foot at the agricultural field got electrocuted and died, due to the snapping of the over head live electric wire on account of the heavy rain and storm, that had occurred in the previous night.

14. It is clear that Rule 91 of the Indian Electricity Rules, 1956 stipulates that every overhead electric line erected over any part of a street or other public place or any factory or mine or any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. It is seen that the electrocution had occurred only in the open place of the village and a poor man and his dependents were made victims.

15. Considering the heavy rain and storm and also the non usage of the electric service for a long time by the consumer, as admitted by the appellants in the written statement the same should have been disconnected or at least the particular service connection could have been switched off, on account of the heavy rain and storm. On the facts and circumstances of the case and also the evidence available on record, I am of the view that the principle of ‘res ipsa loquitur’ is applicable to infer that the electrocution and the instantaneous death of V.Shanmugam, husband of the first respondent and the father of the minor respondents 2 and 3 had occurred only due to the negligence of the Electricity Board.

16. It is seen that the mandatory safety measures stipulated under Rule 91 of the Indian Electricity Rules, 1956 were not complied with by the concerned officials of the appellants, which had caused the death of the husband of the first respondent. The plea of the appellants that it was an act of God or nature cannot be taken as a legal defence.

17. The next question for consideration is regarding the quantum of compensation awarded by the court below. It is not in dispute that the deceased Shanmugam had been the bread winner of the family and the first respondent, wife, aged about 28 years on the date of the occurrence and the minor respondents 2 and 3 were also his dependents. According to the first respondent, who was examined as P.W.1, the deceased was earning an average amount of Rs.50/- per day. Being an agricultural coolie worker, having milk

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vending business, he could have earned normally Rs.50/- per day and accordingly, he could have earned Rs.1,500/- per month. If 1/3rd income is deducted for his personal expenses, at least he could have contributed Rs.1,000/- for the respondents, being his dependents and accordingly, per year, he could have spend Rs.12,000/- for the respondents. Considering the young age of the deceased, multiplier 15 available in the Motor Vehicles Act would be applicable for computing the financial loss sustained by the dependents. Accordingly, the financial loss would have been computed at Rs.1,80,000/- and being an young widow, the first respondent was entitled to a reasonable amount of compensation towards consortium. The trial court, after discussing all this factors has awarded only Rs.90,000/- as compensation with apportionment, since the respondents herein had claimed only Rs.90,000/- as compensation in the plaint. The suit was filed only In Forma Pauperis and subsequently numbered as suit.

18. It has been clearly established in the case by oral and documentary evidence that V.Shanmugam, husband of the first respondent and the father of the respondents 2 and 3 had died, due to the negligence of the officials of the Tamil Nadu Electricity Board and that the compensation awarded by the court below is only a minimum amount, which is no way exorbitant. It is unfortunate that the appellants have preferred the appeal against the judgment, without considering the facts and circumstances of the case.

19. I, therefore find it reasonable to confirm the Judgment and Decree passed by the court below and dismiss the appeal.

20. In the result, the appeal is dismissed with costs. It is ordered that the appellants herein have to pay the court fee payable to the Government.

Tsvn

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Subordinate Judge, Arni.

2. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr. N. Muthuswami, Advocate SR No. 69597

+ 1 cc to Mr. T. R. Rajaraman, Advocate SR No. 68967

Judgment in
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AKR(CO)
SR/10.1.2008

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